SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

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NO. 75-1075

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ISABEL GONZALEZ, *Petitioner*

v.

STATE OF TEXAS, *Respondent*

RESPONDENT'S BRIEF IN OPPOSITION

* * * * * * * *

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OPINION BELOW

The opinion of the Court of Criminal Appeals of Texas sought to be reviewed is an unpublished per curiam opinion. 528 S.W.2d 133. Copy of such opinion is printed in Appendix A of Petitioner's Petition for Certiorari.

JURISDICTION

The formal, procedural requisites would appear to be satisfied in this case although Respondent disputes Petitioner's assertion that rights guaranteed him by the United States Constitution have been denied him.

QUESTION PRESENTED

Whether Petitioner was denied due process because the trial court did not sua sponte hold a preliminary hearing to determine whether he was incompetent to stand trial.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner claims that the due process clause of the 14th Amendment to the United States Constitution is involved.

STATEMENT OF THE CASE

Petitioner was convicted of the offense of murder without malice, the victim being his ex-wife. The conviction was imposed after the trial court, without a jury, accepted a plea of nolo contendre made by Petitioner. The Texas Court of Criminal Appeals rendered a decision affirming that conviction.

By his Petition for Certiorari the Petitioner seeks review of that decision, urging the single ground that he was denied due process because the trial court did not sua sponte hold a preliminary hearing to determine whether he was incompetent to stand trial.

In support of that ground he relies upon a single item of evidence that was admitted during the proceeding conducted by the trial court to determine whether to accept the nolo plea. That item of evidence was a verified

pleading (quoted in Appendix C of the Petition for Certiorari) filed in an adoption suit by his mother-in-law after the homicide seeking to adopt the children born of the marriage of Petitioner and her deceased daughter. That pleading, in Paragraph VI, contains the following statement:

> ". . . said father [i.e. Petitioner] . . . has such serious psychiatric problems that all parental rights to said children should be terminated."

Invoking *Pate v. Robinson,* 383 U.S. 375 (1966), Petitioner contends that that statement raised a bona fide doubt as to Petitioner's competence to stand trial and put the trial court under a duty, imposed by the 14th Amendment due process clause as construed by this Court in *Pate*, to hold a preliminary competency hearing even though a hearing of that kind was not sought by either Petitioner or his retained trial counsel. That contention is wholly without merit, as we shall now show.

ARGUMENT

Neither at the time of the admission of the aforementioned verified pleading into evidence, or at any other time, did the Petitioner or his retained trial counsel claim that Petitioner was so far a victim of psychiatric problems as to be incompetent to stand trial.

Nor did Petitioner or his retained trial counsel ask the trial court to hold a competency hearing. Nor did Petitioner or his retained trial counsel complain of that court's omission to hold a hearing of that kind.

To the contrary, both Petitioner and his retained trial counsel affirmatively negatived any idea that Petitioner

was incompetent to stand trial. This occurred during a colloquy in which the trial judge, Petitioner, and Petitioner's retained trial counsel all participated (such colloquy being quoted in Appendix D of the Petition for Certiorari). In such colloquy the trial court specifically inquired of Petitioner. "Do you understand what's going on, at this time, here?" and received from Petitioner a categorical affirmative answer. Thereafter Petitioner's retained trial counsel, responding to a question from the trial judge whether such counsel agreed, made the following unequivocal statement:

> "Yes I do, your Honor. Mr. Gonzalez is very articulate. We have had quite a number of conversations together and there is nothing the matter with his brain."

These facts showing competency of Petitioner to stand trial are undisputed. No witness, either expert or lay, challenged them.

Furthermore, there is no suggestion by the current defense attorneys who prepared the Petition for Certiorari that there existed, at the time of the hearing on the nolo plea, any witness, either expert or lay, who, if he had been called, would have expressed the opinion that at that time Petitioner was incompetent to stand trial. Nor is there any suggestion by those attorneys that they presently know of any witness, either expert or lay, who, if called to testify, would express the opinion that Petitioner at the time of the hearing on the nolo plea was incompetent to stand trial. The only psychiatrist those attorneys have found to rely on is a Dr. Childers who on January 6, 1976 gave them an affidavit (quoted in Appendix E of the petition for certiorari). That affidavit,

– though not properly before this Court because it was not part of the record made either in the trial court or on appeal, – would not help Petitioner even if it were properly before this Court since in it Dr. Childers, carefully avoiding the expression of a medical opinion that petitioner at the time of the hearing on the nolo plea was incompetent to stand trial, limits himself to the expression of the legal opinion that at that time "a thorough examination should have been made of his competence prior to going to trial."

Such being the condition of the record, it follows that no basis exists for the claim of Petitioner that there was evidence before the trial court sufficient to raise a reasonable doubt as to whether he was incompetent to stand trial and require that court to hold a competency hearing.

Petitioner's reliance on *Pate v. Robinson,* 383 U.S. 375 (1966) in support of that claim is misplaced. In *Pate* there was uncontradicted testimony of four witnesses revealing that defendant had a "long history of disturbed behavior." *Id.* 378. In the present case no witness testified that petitioner had any history of disturbed behavior. In *Pate* four witnesses expressed the opinion that defendant was insane. *Id.* 383. In the present case no witness testified that petitioner was insane. In *Pate* defense counsel throughout the proceedings insisted that defendant's present sanity was very much in issue. *Id.* 384. In the present case no similar insistence was made by petitioner's retained trial counsel, – to the contrary such counsel affirmatively attested to the Petitioner's competency.

Respondent therefore submits that *Pate* is clearly distinguishable and that neither it nor any other case cited by Petitioner may properly be invoked to support his claim that he was denied due process because the trial court did not sua sponte conduct a hearing to determine whether he was incompetent to stand trial.

CONCLUSION

For the reasons stated above, the Petition for Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Wm. B. Mobley, District Attorney of Nueces County, Texas, attorney for Respondent, certify that two copies of the above and foregoing Respondent's Brief in Opposition have been served by placing same in the United States Mail, certified, postage prepaid, addressed to Mr. John J. Pichinson, 412 Wilson Tower, Corpus Christi, Texas, 78401 on this the _____ day of _____, 1976.

_____

WM. B. MOBLEY
District Attorney